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9   BEFORE THE
                BOARD OF REGISTERED NURSING
10   DEPARTMENT OF CONSUMER AFFAIRS
                   STATE OF CALIFORNIA
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12 In the Matter of the Accusation Against: Case No. 2009-197

13 **DALE WAYNE BARKLEY**
    3301 Arena Blvd., Apt. 211   **A C C U S A T I O N**
14 Sacramento, California 95834-2535

15 Registered Nurse License No. 544329

16   Respondent.

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18   Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19   **PARTIES**

20   1.   Complainant brings this Accusation solely in her official capacity as the

21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer

22 Affairs.

23   2.   On or about June 23, 1998, the Board issued Registered Nurse License

24 Number 544329, to Dale Wayne Barkley ("Respondent"). The license will expire on

25 October 31, 2009, unless renewed.

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JURISDICTION

3.   Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4.   Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5.   Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

REGULATORY PROVISIONS

6.   California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7.   California Code of Regulations, title 16, section 1444(a), states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a

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manner consistent with the public health, safety, or welfare. Such convictions or acts shall include assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

COST RECOVERY

8.   Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9.   Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that while on duty as a registered nurse in the emergency room department at University of California Davis Medical Center ("UCDMC"), located in Sacramento, California, Respondent was grossly negligent in the following respects:

a.   On or about June 11, 2005, Respondent struck a patient with a closed fist in the upper left arm and used obscenities while trying to restrain the patient.

b.   On or about December 17, 2005, Respondent used excessive force while restraining a combative patient by forcefully pushing the patient back on to a gurney when the patient attempted to get up, and then struck (slapped) the patient in the face more than once.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

10.   Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct, in that on or about June 11, 2005, and December 17, 2005, while employed as a registered nurse at UCDMC, Respondent demonstrated unprofessional conduct, as more particularly set forth above in paragraph 9.

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1.   Revoking or suspending Registered Nurse License Number 544329, issued to Dale Wayne Barkley;

2.   Ordering Dale Wayne Barkley to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3.   Taking such other and further action as deemed necessary and proper.

DATED: __3|16|09__

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2008100820
Accusation (kdg) 12/18/08

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